

Samuel J. Wade, an Individual d/b/a Major Cab Company and Chauffeurs & Industrial Workers Local 5 of Seafarers' International Union of North America, AFL-CIO. Case 14-CA-13257

May 8, 1981

DECISION AND ORDER

On December 4, 1980, Administrative Law Judge William F. Jacobs issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and has decided to affirm the rulings, findings, and conclusions¹ of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Samuel J. Wade, an Individual d/b/a Major Cab Company, East St. Louis, Illinois, its agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

¹ We agree with the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(3) and (1) of the Act by discharging employees Blue, Floyd, and Davis, as the credited testimony and admissions by Respondent establish that these employees were discharged because of their union activities, and Respondent offered no other credible reasons for the discharges.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act by threatening or interrogating employees because of their union activities.

WE WILL NOT discourage membership in Chauffeurs & Industrial Workers Local 5 of Seafarers' International Union of North America, AFL-CIO, or any other labor organization, by discharging or otherwise discriminating against any person in regard to hire or tenure of employment or any term or condition of employment.

WE WILL NOT refuse to recognize and bargain collectively concerning wages, hours, and other terms and conditions of employment with the above-named Union as the exclusive bargaining representative of the employees in the following unit:

All drivers of taxicabs employed by the Employer at its East St. Louis, Illinois, facility, excluding dispatchers, mechanics, office clerical and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Ottis Blue, Archie Floyd, Albert Davis, and Harry L. Blue immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered, plus interest.

WE WILL recognize and bargain collectively and in good faith with the above-named Union as the exclusive bargaining representative of the employees in the above-described unit, and embody in a signed agreement any understanding reached.

**SAMUEL J. WADE, AN INDIVIDUAL
D/B/A MAJOR CAB COMPANY**

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge: This case was heard before me on January 29, 30, and 31, 1980, in St. Louis, Missouri. The charge was filed on De-

ember 7, 1979, and amended on December 17, 1979, by Chauffeurs & Industrial Workers Local 5 of Seafarers' International Union of North America, AFL-CIO, hereinafter called the Union. The complaint was issued on January 9, 1980, alleging that Samuel J. Wade, an individual, d/b/a Major Cab Company, hereinafter called Respondent, violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended. More specifically, the complaint alleges that Respondent violated Section 8(a)(1) by threatening and interrogating employees with regard to their union activity, violated Section 8(a)(1) and (3) by discharging and refusing to reinstate certain employees because of their union activities, and violated Section 8(a)(1) and (5) by failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees. Respondent filed an answer¹ in which it denies the commission of any unfair labor practices.

All parties were represented² at the hearing and were afforded full opportunity to be heard and to present evidence and argument. Upon the entire record, my observation of the demeanor of the witnesses, and after giving due consideration to the briefs, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, Samuel J. Wade, is an individual proprietor doing business under the trade name of Major Cab Company.³ Respondent maintains its principal office in East St. Louis, Illinois, a cabstand and office, where it is engaged in the operation of a taxicab business.⁴ Whereas the General Counsel alleges that during the year ending December 31, 1979, Respondent derived gross revenues in excess of \$500,000 per year, Respondent denies the truth of this allegation.

The discretionary Board standard applicable to the taxicab business is the retail standard; namely \$500,000.⁵ The General Counsel was unable to establish jurisdiction over Respondent on the basis of this standard through company records because Respondent did not keep records. As an alternative method of proving jurisdiction, the General Counsel called in excess of 20 witnesses⁶ who testified concerning the total amount of fares⁷ col-

lected from passengers during the calendar year 1979. The testimony of these witnesses, all drivers, was not supported by any records since none of them kept records. Taking the average weekly gross of each of the drivers who testified with some degree of certainty,⁸ the record indicates that Respondent's drivers grossed in excess of \$400 per week in fares. Approximately 22⁹ drivers are engaged at any one particular time in driving Respondent's cabs so that approximately \$8,800 per week in gross fares are collected by the 22 drivers. Over a year's time the total fares collected would be \$457,600.¹⁰

The record reveals that Respondent collects from each cab driver a certain sum in return for the use of the Company's colors and radio service if the cab is owned by the driver. This amounts to \$325 per month. If the cab is leased from the Company the driver pays a budget fee of \$17 or \$26 depending on the number of hours for which the cab is leased. Seventeen drivers testified concerning dues or budget payments. By projecting the figures cited by these witnesses to reflect payments in dues and budget payments by 22 full-time drivers over a full year, the total amount paid by drivers to Respondent appears to be in excess of \$80,000. This amount, according to Board law, may be added to the gross receipts of the drivers in order to establish jurisdiction over a taxicab company under the retail standard.¹¹ Add to the gross receipts of the drivers and the rental receipts of the Company the \$41,697 which represents income received by Respondent from the Baltimore and Ohio Railroad for providing taxi services to it during 1979 and it becomes apparent that the Board's discretionary \$500,000 retail standard is met. The statutory jurisdictional requirements are met by virtue of Respondent's dealings with the Baltimore and Ohio Railroad and by the fact that many of Respondent's drivers travel to St. Louis, Missouri, to discharge passengers as well as to interstate bus and train terminals in Illinois.¹² In view of these findings, it is concluded that Respondent is engaged in commerce within the meaning of the Act.¹³

standard. *Checker Cab Company and its Members*, 141 NLRB 583 (1963), aff'd. 367 F.2d 692 (6th Cir. 1966); *Supreme, Victory and DeLuxe Cab Companies*, 160 NLRB 140 (1966).

⁸ Abraham Anthony, Charles Bell, Harvey Blue, Ottis Blue, L. C. Coleman, Alonzo Cookley LaGrone, Albert Davis, Andrew Green, James Hill, Otis Jenkins, George Jim McCray, Sam McGee, Russell Richards, and Joe Wells.

⁹ Samuel Wade testified that between 17 and 22 drivers are so engaged. The dispatchers sheet for January 20, 1980, 7-3 p.m. shift, offered as representative of a typical day's work, indicates that on that shift alone there were 17 cabs in use. I will presume that during the other two shifts there were at the very least five additional cabs in use for that date. The record indicates that there is a heavy turnover at the Company. Samuel Wade so testified. I conclude from this evidence that the number of drivers remains fairly constant in order to keep all available cabs in use.

¹⁰ There is no indication that the Company closes down for a vacation period or that cabs are taken out of service if and when particular drivers take vacations.

¹¹ *Ace Cab Company d/b/a Checker Cab Company*, 175 NLRB 20 (1969); *Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, AFL-CIO; et al. (Safety Cabs, Inc., and New Deal Cab Company, Inc.)*, 180 NLRB 126 (1969).

¹² *Blue Cab Company and Village Cab Company*, 156 NLRB 489 (1965), aff'd. 373 F.2d 661 (D.C. Cir. 1967).

¹³ *Carolina Supplies and Cement Co., supra*.

¹ The General Counsel objected to the receipt of Respondent's answer inasmuch as it was deficient under the National Labor Relations Board Rules and Regulations, Series 8, as amended, Sec. 102.20. The General Counsel was correct in so objecting since Respondent's answer did not specifically address each and every allegation and numbered paragraph in the complaint. The General Counsel, however, chose not to move to strike the answer, but rather to request that Respondent be permitted at the hearing to take the opportunity to respond to each paragraph and allegation in the complaint in order to determine if the issues could be narrowed for the sake of efficiency. I find the General Counsel's position laudable. Subsequently, Respondent admitted a number of nonsubstantive allegations, saving a great deal of time.

² Respondent appeared *pro se*.

³ The parties so stipulated at the hearing.

⁴ See fn. 3, *supra*.

⁵ *Carolina Supplies and Cement Co.*, 122 NLRB 88 (1958).

⁶ The General Counsel subpoenaed additional witnesses who did not appear and there were other employees of Respondent who worked during the relevant period who neither testified nor were subpoenaed.

⁷ Gross receipts of all drivers is an appropriate method of determining whether or not a taxicab company satisfies the Board's discretionary

II. THE LABOR ORGANIZATION INVOLVED

Chauffeurs & Industrial Workers Local 5 of Seafarers' International Union of North America, AFL-CIO, is a labor organization within the meaning of the Act.¹⁴

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

1. Background—The independent contractor issue

Respondent, in its answer, denies that any of its drivers are employees, but, on the contrary, takes the position that they are independent contractors. But the Board has frequently held that, in determining the status of persons alleged to be independent contractors, the Act requires application of the "right of control" test. Where the person for whom the services are performed retains the right to control the manner and means by which the result is to be accomplished, the relationship is one of employment; while, on the other hand, where control is reserved only as to the result sought, the relationship is that of an independent contractor. The resolution of this question depends on the facts of each case, and no one factor is determinative.¹⁵ In the instant case the record indicates that Respondent's drivers pay to the Company a monthly sum of \$325 or a budget of \$17 or \$26 in return for use of the cab for a certain number of hours. Neither an owner-operator nor lessee is permitted to let another individual drive his cab except with the approval of Respondent. By the payment of the above sums, drivers are enabled to drive a taxicab, their own, Respondent's, or someone else's, carrying the Company's colors, name, phone number, address, and a cab number assigned for purposes of specific identification. The city of East St. Louis requires that all cabs operated by Respondent be painted in the same fashion and it is up to Respondent to enforce the city ordinance. The drivers have no option in this matter. The payment to Respondent also entitles the drivers to the use of its dispatching service and to liability insurance¹⁶ paid for by Respondent. A driver who intends to put his cab into service is required to so advise the dispatcher and similarly must advise Respondent when he goes out of service.¹⁷

Rates are established by the city council of East St. Louis on a zone basis and Respondent is required to enforce strict compliance with these regulations, again the drivers having no option but to comply. Rate sheets are supplied to the drivers by Respondent with instructions to abide by the regulations. In addition to the requirement that drivers comply with these regulations, drivers must also abide by a set of work rules distributed to them by Respondent. The work rules apply equally to all drivers and are enforced equally by Respondent. Thus, all drivers are required to wear chauffeurs caps, keep

themselves and their cabs clean, and refrain from drinking, smoking, or using narcotics while on duty. Drivers may not park their cabs within a city block of a tavern and must have hubcaps on their cabs. Breaches of any of these rules make the offending driver susceptible to disciplinary action up to and including possible discharge. Cabs are inspected by Respondent's supervisor, Lonnell Williams. If Williams determines that a cab is unsatisfactory he may order it to be cleaned up and rechecked before being permitted to go into service.

Where complaints are received from the public concerning the action of a particular driver, that driver is called in to the stand where the matter is discussed with him by supervision. The record contains testimony and indeed Respondent admits to incidents having occurred wherein drivers were called in to the stand and reprimanded or disciplined because of complaints from customers or other drivers. Drivers can be and, in some cases, have been reprimanded or disciplined for such violations of rules as overcharging customers, physically abusing customers, failing to wear a chauffeurs cap, and failing to keep cabs clean. Types of discipline range from a warning for a first offense through 3 days' grounding¹⁸ to discharge for offenses which Respondent considers particularly serious. The discharges in the instant case are of course more fully discussed below. Suffice it to say, at this point, that the record more than adequately reflects that the relationship between Respondent and its drivers is one of employer-employee rather than one involving an independent contractor situation. *Yellow Cab, Inc.*, 179 NLRB 850 (1969). Inasmuch as the parties stipulated that Respondent's drivers all share common terms and conditions of employment, this relationship extends to all drivers, owners, and lessees alike.

2. The incidents giving rise to the filing of the charge and the issuance of the complaint

During the several days prior to December 5, 1979, employees of Respondent manifested interest in obtaining union representation, in part because of a desire to obtain hospitalization insurance, perhaps through a union. On December 4 drivers Archie Floyd¹⁹ and Nathaniel Cooper discussed these matters when they met at the Union Electric Company. When Floyd asked Cooper what he thought of the the Union²⁰ and its insurance plan, Cooper agreed that both the Union and its insurance plan were all right.

On December 5 at a meeting of the drivers and management called to discuss various matters, Lonnell Williams, a supervisor, advised the drivers that he had contacted two insurance brokers to have them talk to the men about group insurance. Insurance apparently had been the subject of discussion among the drivers for

¹⁴ James Matthews, president and business agent for Local 5, credibly testified that the purpose of his organization was to represent taxi drivers for collective-bargaining purposes.

¹⁵ *Association of Independent Taxicab Operators, Inc., t/a Diamond Cab, and its Members*, 164 NLRB 859 (1967).

¹⁶ Accidents are reported to the dispatcher. Supervision handles accident investigations and reports, and notifies police.

¹⁷ Drivers are otherwise free to drive whatever hours they choose.

¹⁸ "Grounding" is the term used to describe a disciplinary measure involving denial to the driver of his right to the use of the dispatching service while still requiring him to pay the cost of renting the cab. Since the record indicates that a large proportion of a driver's income is dependent on his access to the dispatching service, denial of this privilege effectively undermines his income, and continuing to charge him for use of the cab during this period is considered tantamount to a fine.

¹⁹ One of the alleged discriminatees.

²⁰ The Charging Party herein.

some time prior thereto. Cooper, at this point, stated, "We're going to scout around, we got something better."²¹ We can get insurance to cover us and we only have to pay \$9 per month." Cooper was, of course, referring to the Union's insurance plan. Ottis Blue, another driver apparently familiar with the subject matter, commented, "Fellows, that insurance would have to come through the Union. You can't get that unless you join the Union." Freddie Wade, Respondent's manager, over-hearing Blue's remark, said, "You can quit beating your chops. There will not be no union in this company." He added that he would close up his business before he would have a union.²² Lonnell Williams, Respondent's supervisor, stated that the Company would not discuss any insurance plan which was affiliated with a union, but was agreeable to looking into an insurance plan without unionization.

After the meeting some of the drivers went outside where the subject of the Union continued to be discussed by Cooper and others. They asked Ottis Blue if he could get in contact with a union representative in order to further look into the matter. Blue assured them that he could. The drivers told Blue that they felt that they should meet with the Union as soon as possible. Blue contacted the Union and spoke with the president of Local 5, who advised him that, although he could not meet with Respondent's employees that day, he could do so the following day. Arrangements were made to meet at 13th and St. Louis Avenue at noon the following day, December 6. Blue subsequently advised the other employees of the scheduled meeting. Meanwhile Union Business Representative Matthews had the Union's attorney draw up a petition for the drivers to sign at the forthcoming meeting. During the discussion between Blue and Matthews there was no mention of insurance.

On December 6 while the drivers were gathering at the appointed place waiting for the arrival of Matthews, Freddie Wade stopped by²³ and, noticing Floyd, said to him, "I see you're here messing with Blue in this union thing again. Blue has already been fired. We're going to take his radio out tomorrow. You keep messing with me and you're going to find yourself without a cab to drive also."²⁴

Shortly thereafter the scheduled meeting took place. About 17 of Respondent's drivers attended the meeting, including Archie Floyd, Ottis Blue, and Albert Davis, 3 of the alleged discriminatees. Blue introduced Matthews whom many of the drivers already knew because they had been members of Local 5 while working for other companies. After being introduced, Matthews read the petition which had been drawn up to the assembled drivers:

Authorization Petition

The undersigned hereby authorizes Chauffeurs & Industrial Workers Local 5 Seafarers' International Union of North America to represent us exclusively in negotiating with our Employer regarding our wages, hours and conditions of employment.

Matthews read the petition through three times before signatures were obtained thereon. Besides reading the content of the petition to the drivers, Matthews advised them as to how it was going to be used. He informed them that the petition would be presented to the Company in order to obtain recognition as their representative, but that, if recognition were denied, the Union would petition the National Labor Relations Board for an election. He also assured those present that the initiation fee for joining the Union would be waived for all of those in the bargaining unit. With regard to the Union's health and welfare plan Matthews stated that anyone who came into the Union, working in a shop covered by a contract, would be covered by the plan.²⁵ Seventeen of those present signed the petition in Matthews' presence. After the 17th signed the petition, Matthews gave it to Ottis Blue to obtain additional signatures with instructions to read the petition to each driver and to explain what it was before obtaining their signatures on it.

After the meeting closed, Ottis Blue took the petition to get additional signatures. He saw driver Wade Buchanan at the corner of 19th and Bonn. He pulled him over, gave him the petition, and told him to read it. Buchanan then signed the document and returned it to Blue. Blue then proceeded to 18th and Broadway to a restaurant where he found driver James Hill. Blue told Hill to read the petition, that Blue wanted to make sure Hill really understood what he was signing. Hill did as requested and then signed the document in the presence of both Blue and Archie Floyd. Later, Ottis Blue presented the petition to his brother, Lundy Blue, and told him, "Sign this for the Union." Lundy agreed to sign the document and did so. Still later Floyd and Ottis Blue attempted to get other employees to sign the petition but without success.²⁷

Sometime during the afternoon of December 6, after Ottis Blue had just dropped off a passenger, he received a call on the radio from the dispatcher ordering him back to the stand. When he arrived, Samuel Wade asked Blue why he was calling meetings and pulling cabs off the street. He told Blue that all meetings should be at the cabstand. Blue replied that the meeting was called in order to get a union. Wade asked, "How are you going to get a union? Nobody has asked me about a union. How can anyone put a union in here without my consent?" Blue said, "We don't need your consent. We are

²¹ This statement was attributed to Ottis Blue by Respondent's supervisor, Lonnell Williams.

²² Par. 5A of the complaint was admitted at the hearing.

²³ Wade had been advised of the meeting by the dispatchers.

²⁴ At this time Blue apparently had not been advised of the decision to terminate him. Wade substantially admitted the gist of this conversation.

²⁵ This statement may have been in reply to a question concerning whether the drivers could obtain the Union's health and welfare coverage without actually joining the Union. Matthews replied that this could not be done and offered the cited explanation.

²⁶ Drivers Otis Jenkins' and Samuel McGee's description of what was said at this meeting differs in certain respects from that contained in the testimony of other witnesses. Where their testimony differs from that of other witnesses, it is not credited.

²⁷ L. C. Coleman so testified.

going to get a petition and the majority is going to rule." Wade asked Blue, "If there's two cab companies in town, one has a union and one doesn't, why don't you go over to American Lease, they have got a union over there. I don't want a union over here. All of my people, as far as I know, don't want a union." Blue said, "We want a union because a union has insurance." Wade replied, "You don't need a union to have insurance. They are two different things. You pay union dues, that's one thing. Insurance is something else. I have brought two different companies in here with their plans for group insurance. Group insurance is fine. We all need group insurance; we don't need no union. The same company that has insurance for the cabs also has group insurance. Their rates are not high. And there is another company that also offers group insurance. I have a responsibility to help keep these cabs running. I have a responsibility to these people. I have a responsibility to our customers and to the city. And if you are going to be calling cabs off the street, I would rather for you to take your cab off the stand and I'll pay you whatever you have coming, and you can go your way and I can go mine."²⁸ Sometime during this conversation, it is admitted,²⁹ Wade told Blue that he would close the business down before he would have a union in his cab company.

About 7 or 7:30 p.m. on the evening of December 6 Ottis Blue was riding with Floyd in Floyd's cab when Floyd said that he would like to talk with Williams. He contacted the stand and requested Williams to remain at the stand until he could get there. When he arrived he asked to speak with Williams in private. Williams agreed and he, Blue, and Floyd went out to Floyd's car where they engaged in a discussion during which Floyd asked Williams why he was so much against the Union. Williams replied that he was not against the Union but that "Mr. Wade owns the cab company and he's against the union." He went on to say that the Company would not have a union and would not discuss possible benefits involving unionization.³⁰ At this point in time, Freddie Wade came up and tapped on the window on the driver's side of the car and motioned Floyd to roll down the window. When Floyd did so, Wade said, "I see you're messing with Blue again and that damn union. You're fired right now. Give me your keys." Floyd replied, "No, I'm not giving you my keys because I paid my budget for the day." Wade asked them whether or not they had started the union activities.³¹ Both denied the accusation. Nevertheless, Wade stated, "I told you guys there will be no union, there just won't be no union. . . . In the morning we'll pull your radio out of your car [apparently addressing Blue], because you're starting a lot of stuff that oughtn't to be." Then directing himself to

Floyd, Wade said, "And Archie Floyd, you're right with him." At this time Williams got out of the cab, walked around, and took Wade by the arm, and, as they walked toward another cab, Floyd drove off.

On December 7, between 9:30 and 10:30 a.m., James Matthews visited Samuel Wade's office. There, in the presence of Lonnell Williams, Freddie Wade, Ottis Blue, Archie Floyd, and Albert Davis, Matthews told Wade that he had a petition and represented a majority of his drivers. He asked Wade for authorization to represent the employees. Wade replied, "I don't care if you've got a hundred per cent, there won't be a union."³² I'm not going to join the union. There will be no union here. I don't want no union." After Matthews tried to explain to Wade that he was not asking Wade to join the union, but that the employees had authorized him, Matthews, to represent them, and that it was the employees who were joining the union, Wade stated, "There won't be no union here. I am not going to have a union, I will close this shop down before I have a union."³³ At this point Matthews merely thanked Wade, and then left.

As they were leaving, Freddie Wade asked Blue where his car was. Blue replied that it was on the corner of 13th and St. Louis Avenue. Wade then stated, "Bring it to the stand. I want to take the radio out." Blue did as he was told. When he returned to the cabstand he was met by Samuel Wade. He explained to the owner that Freddie had told him to bring his car to the stand so that he could take out his radio. Samuel Wade replied simply, "That's right." Blue asked, "What, you're firing me off the stand?" Wade replied, "That's right, you're the instigator of the Union." He added, directing his remark at Floyd who was also present, "That goes for you too." While this conversation was going on, Freddie Wade was taking out Blue's radio. When Floyd was told that he too was being fired, he went to the cab which he had been driving for Wade, removed his personal effects, and gave the keys to Freddie Wade.

Also on December 7, presumably before they were fired, Lonnell Williams engaged Ottis Blue and Archie Floyd in a conversation during which he accused them of being instigators and told them that the Company did not need instigators. Since Williams admitted on the stand that he knew that both Blue and Floyd were involved with the Union, I must conclude that, by accusing them of instigating, Williams was referring to their union activity.³⁴

On the afternoon of December 7 Albert Davis received a call to come to the stand. When he arrived at the stand he found Samuel and Freddie Wade and Lonnell Williams waiting for him. They asked him who had gotten the Union started. Davis replied that he did not know, and that all of the employees who had signed the petition wanted the Union. Freddie Wade stated that Davis was fired from Major Cab Company, and that

²⁸ This portion of the conversation appears as read into the record from Samuel Wade's sworn affidavit which he admitted at the hearing to be a true reflection of what was said. Blue testified only that Wade stated that he would like Blue to take his cab off the stand and, when Blue asked him why, Wade replied, "Because you're the instigator of the Union." I credit both but find either version is violative in itself.

²⁹ Samuel Wade admitted under cross-examination that he made this statement.

³⁰ Admitted at the hearing by stipulation.

³¹ This interrogation was admitted during cross-examination of Freddie Wade by counsel for the General Counsel.

³² According to Lonnell Williams' testimony.

³³ The conversation appears as credibly testified to by James Matthews as supported by the testimony of Ottis Blue, Albert Davis, and, in part, Freddie Wade and Lonnell Williams.

³⁴ In an affidavit which Williams furnished to the National Labor Relations Board he used the phrase "union instigators" in connection with the termination of Blue, Floyd, and Davis.

"there would be no union at Major Cab Company." Williams accused Davis of being an instigator and stated, "I don't feel that the company needs an instigator, so as of now you are no longer employed with Major Cab." Davis again denied complicity, whereupon Freddie Wade accused Davis of having flagged his drivers over in order to talk to them about the Union. He asked him why he was stopping his cabs. Davis explained that he had always talked to the drivers.³⁵ Samuel Wade then said that maybe they should give Davis one more chance. He sent Davis back to work.

Ten minutes after being sent back on the street to work Davis was recalled to the stand. Freddie Wade and Lonnell Williams were there. They told him that he was no longer with the Major Cab Company, to take his cab back to the owner and not to put his foot back on the premises. Davis left.

During the hearing stipulations were received to the effect that:

During the week of December 10, 1979, on a specific date unknown to the Regional Director, Supervisor Lonnell Williams told an employee that Respondent would close his business before he allowed employees to have a union represent them.

On various occasions during the week of December 10, 1979, on specific dates unknown to the Regional Director, both in person at Respondent's cab stand and office and by telephone, Respondent owner Samuel J. Wade interrogated various employees about their union activities and sympathies.

B. Analysis and Conclusions

1. The 8(a)(1) violations

Evidence and stipulations in the record indicate that Respondent interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act by the following acts and conduct:

The statement of Freddie Wade on or about December 5, 1979, that there would be no union at the Company and that he would close up his business before he would have a union.

The statement of Freddie Wade on or about December 6, 1979, made at the intersection of 13th Street and St. Louis Avenue and directed to employee Archie Floyd, "I see you're here messing with Blue in this union thing again. Blue has already been fired. We're going to take his radio out tomorrow. You keep messing with me and you're going to find yourself without a cab to drive also."

The statement of Samuel Wade on or about December 6, 1979, made to Ottis Blue, that he would close the business down before he would have a union in his cab company.

The statement of Lonnell Williams on or about December 6, 1979, made to Ottis Blue and Archie Floyd, that the Company would not have a union and would not discuss possible benefits involving unionization.

³⁵ Davis had in fact stopped drivers George LaGrone and Joe Wells. Ottis Blue had stopped certain drivers to ask them if they were in favor of the Union.

The statement of Freddie Wade on or about December 6, 1979, made to Archie Floyd in Ottis Blue's presence, "I see you're messing with Blue again and that damn union. You're fired right now. Give me your keys."

The interrogation of Ottis Blue and Archie Floyd by Freddie Wade on or about December 6, 1979, wherein Wade asked these employees whether or not they had started the union activities.

The statement of Freddie Wade on or about December 6, 1979, wherein he threatened to take Blue's radio out of his cab because of his union activity and suggested to Floyd that action might also be taken against him.

The statement of Samuel Wade on or about December 7, 1979, made in the presence of certain of his employees, that he did not care if the Union had a hundred percent, there would not be a union, and he would close the shop down before he would have a union.

The statement of Samuel Wade on or about December 7, 1979, in telling Ottis Blue and Archie Floyd that they were being fired because they were "instigators of the Union."

The statement of Lonnell Williams on or about December 7, 1979, to Ottis Blue and Archie Floyd in which he accused them of being union instigators and told them that the Company did not need instigators.

The interrogation on or about December 7, 1979, by Samuel Wade, Freddie Wade, and Lonnell Williams of Albert Davis concerning who had gotten the Union started.

The statement of Freddie Wade on or about December 7, 1979, to Albert Davis that he was fired from Major Cab Company, and that there would be no union at Major Cab Company.

The statement of Lonnell Williams on or about December 7, 1979, to Albert Davis wherein he accused Davis of being an instigator and stated that he did not feel that the Company needed an instigator and that as of then Davis was no longer employed with Major Cab Company.

The statement of Freddie Wade on or about December 7, 1979, wherein he accused Albert Davis of having flagged down other drivers in order to talk to them about the Union.

The statement of Lonnell Williams made during the week of December 10, 1979, to an employee that Respondent would close his business before he allowed employees to have a union represent them.

The interrogation by Samuel Wade during the week of December 10, 1979, of various employees about their union activities and sympathies.

2. The 8(a)(3) violations

a. Ottis Blue

The record indicates that Ottis Blue was active on behalf of the Union. On December 5 he spoke to the employees in favor of joining the Union in order to obtain the benefits of the Union's insurance plan. His remarks were overheard by Freddie Wade who stated that he would close up his business before he would have a union. Thus, it is evident that early in the campaign Blue

was active on behalf of the Union, his sympathies were well known to Respondent, and the latter did nothing to disguise its animus toward the Union.

Thereafter, Blue, upon request of the other employees, acted as a go-between, contacting the Union and arranging for a meeting with the Union's business agent. Subsequently, Blue took the responsibility of advising the other drivers of the scheduled meeting. When Respondent's manager heard about the meeting, he visited the site while the drivers were still awaiting the arrival of the Union's representative. Noticing Floyd, he made the statement to him, "I see you're here messing with Blue in this Union thing again. Blue has already been fired. We're going to take his radio out tomorrow. You keep messing with me and you're going to find yourself without a cab to drive also." Thus, this incident reveals not only continued union activity on the part of Blue and knowledge of his union activity on the part of Respondent but a decision already having been made by Respondent to terminate him because of his involvement in the union campaign.

At the union meeting, after the petition was signed by those present, it was given to Blue to obtain additional signatures. Blue succeeded in getting three more drivers to sign the petition, one by having a driver pull over in order to solicit his signature. Thus, Blue continued the organizing campaign which the record clearly indicates came to the attention of management. That afternoon Blue was called back to the stand where Samuel Wade complained about Blue's calling the meeting and pulling cabs off the street. Blue openly admitted that the meeting was called in order to get a union to represent the drivers. An argument then took place during which Wade rejected the idea of having a union at his cab company and threatened to close the business before allowing one to represent his drivers. Blue just as vociferously backed his position, stating that whether or not a union represented the employees was a matter for the employees themselves to decide. Thus, the two antagonists stood their ground firmly and the argument concluded with Wade stating that he would rather Blue take his cab off the stand adding, "I'll pay you whatever you have coming, and you can go your way and I can go mine." Thus, the discussion highlights the antagonism between Wade and Blue based entirely on their antiunion and pronoun positions. Wade's animosity was in no way disguised.

Later in the evening when Freddie Wade discovered Blue and Floyd together sitting in Floyd's car, he said, "I see you're messing with Blue again and that damn union. You're fired right now. Give me your keys." Thus, Wade, by this statement, clearly indicated that in his eyes Blue and the Union were practically synonymous. He told Blue that in the morning he would pull the radio out of his car. Wade left no doubt that the threat was in retaliation for Blue's activity, support, and sympathy for the Union and its organizing campaign.

The following day when Matthews visited Respondent and presented the petition and asked for recognition, he was accompanied by Blue, Floyd, and Davis. It had to be obvious to Wade that the meeting organized by Blue and his activity of the previous day had resulted in the

signing of the petition by the drivers and that his presence there with Matthews was evidence that he was still firmly resolved to maintain his position in favor of the Union and against Respondent. Once again Wade rejected the Union and the principle of representation and reiterated that he would close the shop before permitting a union to represent his employees. Since Blue, by his very presence at the side of Matthews and by his previous statements in support of unionization, had clearly taken a position diametrically opposed to Respondent's position, Freddie Wade took immediate action. He ordered Blue to bring in his cab so that the radio could be removed. When Blue returned, Samuel Wade, leaving absolutely no doubt as to the reason for his discharge, told Blue that he was being fired because he was "the instigator for the Union." He added, directing his remark at Floyd, "That goes for you too." Blue's radio was at that time removed from his cab by Freddie Wade, thus effectively terminating his employment. I find the evidence overwhelming that Blue was terminated because of his activities on behalf of the Union and that his discharge was in violation of Section 8(a)(1) and (3) of the Act.

b. Archie Floyd

Floyd was among the first of Respondent's employees to discuss with other employees the possibility of obtaining insurance through the Union. When Blue scheduled the December 6 union meeting with Matthews, Floyd was not only there but was Freddie Wade's target when he came by to see what was happening. Pointedly, as noted above, Wade said to Floyd, "I see you're here messing with Blue in this union thing again. Blue has already been fired. We're going to take his radio out tomorrow. You keep messing with me and you're going to find yourself without a cab to drive also." Thus, Wade not only announced that he knew of Blue's involvement with the Union, was dissatisfied with that involvement, and had decided to discharge Blue because of his involvement, but also made known the fact that Respondent was aware of Floyd's complicity in Blue's union activity and would terminate him as well, unless he mended his ways.

Despite Wade's warning, Floyd remained at the union meeting and was the first to sign the petition when circulated at the meeting. When Blue took the petition from Matthews after the meeting to circulate it further among drivers who had not been present, Floyd accompanied Blue on his organizing campaign and was present when the document was presented for signature to other drivers. Similarly, when Blue was called back to the cabstand to be confronted by Wade with the fact that he had been "pulling cabs off the street" to solicit for the Union, Respondent's knowledge of Floyd's participation in the same activity may fairly be inferred since Blue and Floyd had been engaged in this activity riding around together.

Despite Freddie Wade's warning to Floyd about "messing around with Blue in this union thing," Blue and Floyd continued to ride around together and while doing so on the evening of December 6, Floyd decided to return to the cabstand to talk to Williams. When he did

so, in the company of Blue, he asked Williams why he was so much against the Union. By his mere question he clearly indicated his support thereof. While Williams was explaining to both Blue and Floyd that he personally was not against the Union but that Wade, who owned the Company, was against the Union and, by implication, against its supporters, i.e., Blue and Floyd, Wade came up and said to Floyd, "I see you're messing with Blue again and that damn union. You're fired right now. Give me your keys." Thus, it is apparent that after having decided to terminate Blue because of his activities on behalf of the Union, Wade, preceiving that Blue and Floyd were firmly allied in the organizing campaign, announced his decision to discharge Floyd for the same reason he had already decided to terminate Blue.

As noted above, when Matthews visited the cabstand on the morning of December 7 to demand recognition, Floyd was there along with Blue and Davis to indicate where their support lay. When, after the meeting, Blue was directed to bring in his cab to have his radio removed, and thereafter did so, and was told that he was being fired because he was an instigator for the Union, Wade pointedly remarked to Floyd, "That goes for you too." Thus, Floyd was told point blank that he, like Blue, was being terminated because he was an instigator for the Union. And so he was. I find, therefore, that Floyd, like Blue, was terminated in violation of Section 8(a)(1) and (3) of the Act because of his union activities.

c. *Albert Davis*

Albert Davis attended the union meeting on December 6 at 13th Street and St. Louis Avenue and signed the petition distributed at the time by Matthews. When Matthews presented the petition to Samuel Wade he was accompanied at the time by Davis along with Blue and Floyd.

That afternoon Davis received a call to come to the stand where he was interrogated by both Wade and Williams as to who had gotten the union started. Why Davis should have been chosen for interrogation is not evident from the record except that he was in the company of Matthews, Blue, and Floyd that morning when recognition was demanded. When Davis replied that he did not know who had started the Union, and that all of the employees who had signed the petition wanted the Union, Freddie Wade, apparently dissatisfied with Davis' answer, stated that Davis was fired from Major Cab Company, that there would no union at Major Cab Company. Williams' accusation that Davis was an instigator and statement that he did not feel that the Company needed an instigator, followed by his immediate termination of Davis, clearly indicate that Davis was terminated because of Respondent's conclusion that Davis, like Blue and Floyd, who were terminated earlier in the day, was involved with the Union. Wade specifically asked Davis why he had been flagging other drivers over and talking to them about the Union. When Davis replied that he had always talked to the other drivers, Samuel Wade decided to give him another chance. However, 10 minutes later he was called back to the cabstand and summarily discharged. I conclude from the context of the entire sequence of events that Davis was terminated because of

his activity on behalf of the Union in violation of Section 8(a)(1) and (3) of the Act.

d. *Harvey L. Blue*

Harvey Blue was employed as a cabdriver by Respondent up until December 1979, off and on, for about a year. The arrangement which he had with Respondent was one whereby he would drive a 12-hour shift for a budget fee of \$17 per night. The cab he drove belonged to his father, Ottis Blue.

When the Union's organizational campaign began, Harvey Blue was active on its behalf. He attended the union meeting on December 6 and signed the petition at that time.

When Freddie Wade removed the radio from Ottis Blue's cab, in effect terminating him, he also deprived Harvey Blue of his means of earning a livelihood, thus, in effect, terminating him also since Harvey Blue no longer had a cab to drive.

It would not appear that Harvey Blue was terminated because of his own participation in the union organizational campaign. Respondent may or may not have known of his role therein. Rather, it seems quite apparent that, when Respondent removed the radio from his father's cab for the sole purpose of terminating Ottis Blue, thereby retaliating against Ottis Blue for organizing for the union with the deliberate intention of undermining the union campaign, Harvey Blue suffered the same fate as his father. Respondent was fully aware at the time that Harvey Blue's job was dependent on his father's cab along with the radio service supplied by Respondent. Therefore, when Respondent removed the radio from that cab, it necessarily must have foreseen the consequences of its discriminatory act. It is therefore responsible for such foreseeable consequences. Since the discriminatorily motivated act which resulted in the termination of Ottis Blue resulted likewise in the termination of Harvey Blue, the latter's termination is in violation of Section 8(a)(1) and (3) of the Act as well.³⁶ Cf. *Seligman & Associates, Inc., and its Wholly Owned Division, Scott Management Company*, 240 NLRB 110 (1979).

e. *Defenses*

Respondent contends that the discharges were terminated, in part, because they were stopping other cabdrivers, thus interfering with business.³⁷ However, there is no evidence that there was any rule, written or otherwise, which forbade one driver from signaling another to stop, and then engaging him in conversation about the weather, sports, personal matters, or whatever. Thus, if Respondent truly had any objection to the discriminatees

³⁶ The record reveals that Harvey Blue later in December drove for Major Cab Company by using his uncle's cab with the apparent acquiescence of Respondent. The question of whether or not Harvey Blue could have made other arrangements with Respondent to drive a Major Cab Company cab is irrelevant to the question of the violation. That issue would more properly be addressed in a backpay procedure to determine to what extent Harvey Blue ameliorated the effects of the discriminatory discharge.

³⁷ Respondent's allegations that the discriminatees were scaring passengers is rejected for lack of documentation or other substantiating evidence.

stopping other drivers, it is patently clear that the objection was not to the fact that one driver stopped another to engage him in conversation but rather to the fact that they were soliciting for the Union. This conclusion is based both on the absence of any rule against such contact between drivers as well as the blatantly demonstrated union animus reflected in the record by the numerous instances of 8(a)(1) conduct on the part of Respondent's officers.

Moreover, Ottis Blue denied that he, Floyd, and Davis stopped any cabs prior to his being fired, and asserted that it was after he was terminated that the three discriminatees began to pull cabs over in order to advise the other drivers of their discharges and to request that they attend a meeting to be held the evening of December 7 to discuss the matter. Although Williams testified that Davis was fired for riding around with Ottis Blue and Archie Floyd, and stopping other drivers, threatening them, asking them to sign a petition, and telling them not to pick up passengers, and that all of this was going on before the discharges, the record does not support Williams' testimony. On the contrary, the record clearly indicates that all, or nearly all, incidents³⁸ wherein cabs were stopped occurred after the termination of Blue and Floyd, and before the termination of Davis, when drivers were advised of the earlier terminations, of a forthcoming meeting³⁹ called to discuss the terminations, and of the continuing union organizing effort. Consequently, since the incidents wherein drivers were flagged down by Blue, Floyd, and Davis occurred after the discharge of Blue and Floyd the flagging incidents⁴⁰ could not have been the reason for the discharge of the first two. And even if Davis' discharge was based on his flagging down drivers to get them to attend the specifically called meeting, as it might appear, his efforts were protected since they were in response to Respondent's earlier unfair labor practices; i.e., the terminations of Blue and Floyd.

Aside from the complaint that the discriminatees were flagging down other drivers, Respondent proffered certain other reasons as defenses for the discharges of Blue, Floyd, and Davis. Thus, all three, it was stated, were the subjects of customer complaints over the previous several years. L. C. Coleman, admitted by Respondent at the

³⁸ The solicitation of Wade Buchanan's signature on the union petition may have been an exception.

³⁹ Although Carol Johnson, the dispatcher, testified extensively on the subject of the flagging incidents and their supposed effect on other drivers and on passengers, I find her testimony of little value. It was vague, lacked specificity, and was virtually unsupported. It is clear from the total context of her testimony, however, that, contrary to Respondent's position, the flagging incidents which she described would have occurred after the terminations of Blue and Floyd, and I so find. The various dates she assigned to the incidents, though, are clearly in error, the events necessarily occurring later than she stated.

⁴⁰ The record does not indicate, as Respondent appears to contend, that when Davis was flagging down cabs he was trying to instigate a general strike. Rather, it would appear that Davis was merely attempting to organize a meeting of the drivers at which the discharges could be discussed. Evidence in the record indicates that some drivers stopped working in the late afternoon on December 7, that the meeting was scheduled for 6 o'clock that evening, and that the drivers returned to work about 7:45 or 8 p.m. Thus, it would appear that the work stoppage was a temporary one called for a specific purpose and not a full strike as intimated by certain of Respondent's witnesses.

hearing to be one of its supervisors, testified that Ottis Blue had on one occasion failed to pick up a passenger though he had been scheduled to do so and had said on another occasion that he would not haul senior citizens for \$1 as required by an East St. Louis ordinance. Carol Johnson, the dispatcher, testified that Blue had on another occasion overcharged a passenger, while Freddie Wade testified that Blue had caused problems with city hall and had on one occasion had "physical contact" with a passenger for which he had been grounded 3 days as discipline for the offense. Floyd, in his testimony, admitted to having put a passenger out of his cab when the passenger pulled a knife on him and having on one occasion been called into the stand for overcharging a passenger. No particulars were offered to substantiate the allegation concerning customer complaints against Davis.

I reject Respondent's contention that these customer complaints were the basis for its decision to terminate Blue, Floyd, and Davis. The incidents occurred long before the discharges of the discriminatees, they were never told that such incidents would be grounds for discharge, and the incidents were not even mentioned at the time of their discharges. The incidents were clearly afterthoughts and not even considerations in Respondent's decision to terminate the three employees.

In an affidavit supplied to the Board, Lonnie Williams, Respondent's supervisor and the individual who admitted personally having fired Davis, stated:

In my view, Ottis Blue, Archie Floyd and Albert Davis were the Union instigators, and it is because they was the union instigators that they got fired.

Williams at the hearing admitted that what was contained in the affidavit was true. Then later he denied that it was true and attempted to explain:

A. No its not true. That [the union activity] led up to that part of it but they should have been fired a long time ago. That just topped it off.

JUDGE JACOBS: What you're saying is the fact that they joined the union or instigated the union, that was one of several reasons.

THE WITNESS: One of several reasons.

Thus, Williams admitted that the three discriminatees were, at least in part, terminated for instigating on behalf of the Union, and that is good enough for me. Respondent violated Section 8(a)(1) and (3) of the Act by terminating Ottis Blue, Archie Floyd, and Albert Davis.

f. Recall of the dischargees

The General Counsel alleged that Respondent failed and refused to reinstate Ottis Blue, Harvey Blue, Archie Floyd, and Albert Davis to their former positions of employment. The record reflects that Respondent made no offer to reinstate any of the discriminatees to their former positions after their discharges, and I find that it did not do so.

3. The 8(a)(5) violations

a. *The appropriate unit*

The General Counsel alleges in the complaint that the following employees of Respondent constitute an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All drivers of taxicabs employed by the Employer at its East St. Louis, Illinois, facility, excluding dispatchers, mechanics, office clerical and professional employees, guards and supervisors as defined in the Act.

Respondent answered that the drivers are independent contractors. I have, however, rejected this contention in this Decision and have found the drivers to be employees, *supra*.

During the hearing the parties entered into the following stipulations:

The drivers of the Major Cab Company all share the common terms and conditions of employment, such as the same supervision, the same duties, the same work rules, that they are compensated in the same fashion, that they charge the same fares, which fares are established by the City of East St. Louis and are enforced by the Major Cab Company.

That the Major Cab Company carries liability insurance for the cabs, that Major Cab Company handles all traffic accident investigations and reports. That Major Cab Company enforces work rules, that the Major Cab Company enforces the city requirements that all cabs be painted in the same fashion, that Major Cab Company provides dispatching service for all drivers.

That Major Cab Company counsels drivers about customer complaints. That Major Cab Company disciplines drivers for violations of the work rules. And that Major Cab Company calls drivers' meetings for the purpose of discussing Major Cab Company operations.

Under similar circumstances, a unit of taxicab drivers has been found by the Board to be appropriate (*Mound City Yellow Cab Company*, 132 NLRB 484 (1961)), and I find the unit herein described also appropriate.

b. *The Union's representative status*

The General Counsel alleges that on December 6, 1979, a majority of the employees of Respondent, in the appropriate unit previously described, designated and selected the Union as their representative for purposes of collective bargaining. In support of this allegation the General Counsel subpoenaed what few records Respondent kept and had read into the record the names of approximately 20 individuals whom Respondent's manager or owner agreed on the record were driving for Respondent as of December 6. Comparing this list of employees to the names of the drivers appearing on the petition designating the Union as their representative, it is

clear that as of December 6, 1979, the Union did, as alleged, represent a majority of Respondent's employees for purposes of collective bargaining, and I so find.

The language on the petition,⁴¹ which was read to the signers three times by Matthews and which was read by most of the signers themselves, is clear and unambiguous. The fact that some of the drivers authorized the Union to represent them in order to take advantage of the Union's insurance plan in no way detracts from or undermines the authorization itself. Moreover, I find that Matthews' offer to have the initiation fee of all people in the bargaining unit waived had no deleterious effect on the authorization plainly made by the individuals involved. The Union was, as of December 6, the exclusive collective-bargaining representative of the employees in the above-described appropriate unit and remained so thereafter.

c. *The refusal to bargain*

The record reflects that on December 7 Union Business Representative James Matthews visited Respondent and requested Respondent to recognize the Union as the exclusive collective-bargaining representative of Respondent's employees in the appropriate unit described above, and to bargain collectively with it as the exclusive collective-bargaining representative of said employees with respect to their rates of pay, wages, hours of employment, and other terms and conditions of employment. Respondent on that day refused to recognize the Union and likewise refused to bargain with it. Rather, Respondent undertook immediately a campaign consisting of the above-described conduct violative of Section 8(a)(1) and (3) of the Act. The Board has held that, where an employer refuses to recognize and bargain with a union as the duly designated majority representative of its employees while simultaneously engaging in unfair labor practices which serve to undermine the union's majority status, the employer is in violation of Section 8(a)(1) and (5) of the Act.⁴² Since the record reflects that this is precisely what occurred in the instant case, I find that Respondent has, as charged, violated Section 8(a)(1) and (5) of the Act.

I also find that Respondent's unfair labor practices were so pervasive as to tend to undermine the majority status of the Union, thus impeding the election process by rendering a free choice therein improbable.⁴³ Under similar circumstances, where a union's majority has been established and the nature and extent of an employer's unfair labor practices have made the holding of a free election improbable, the Board has found a bargaining order appropriate.⁴⁴ I find that proper effectuation of the National Labor Relations Act requires a bargaining order in the instant case.

⁴¹ Quoted verbatim, *supra*.

⁴² *Trading Port, Inc.*, 219 NLRB 298 (1975).

⁴³ *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969).

⁴⁴ *Ibid.*

CONCLUSIONS OF LAW

1. Samuel J. Wade, an Individual d/b/a Major Cab Company, is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening to close up the business before permitting a union to represent the employees, stating that it had already fired one union adherent and threatening to fire another if he continued to engage in union activities, stating that it would not have a union and would not discuss possible union benefits involving unionization, telling an employee that he was fired because he had been fraternizing with union adherents and engaging in union activity, interrogating employees concerning their union activities, threatening employees that it would remove the radios from their cabs because they had engaged in union activities, telling employees that they were being fired because they were "instigators of the Union," and forbidding employees to discuss union matters with other employees, Respondent has violated Section 8(a)(1) of the Act.

4. By discharging Ottis Blue, Archie Floyd, and Albert Davis because they engaged in union activities and by effecting the termination of Harvey L. Blue because of the union activities of his father, Ottis Blue, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

5. All drivers of taxicabs employed by Respondent at its East St. Louis, Illinois, facility, excluding dispatchers, mechanics, office clerical and professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

6. Since December 6, 1979, a majority of the employees of Respondent in the aforesaid appropriate unit has designated or selected the Union as its representative for purposes of collective bargaining.

7. By refusing to recognize and bargain with the Union as the exclusive bargaining representative of the employees in the aforesaid appropriate unit, Respondent has violated Section 8(a)(1) and (5) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Ottis Blue, Archie Floyd, Albert Davis, and Harvey L. Blue were discriminatorily discharged, I shall recommend that Respondent be required to offer them full and immediate reinstatement, with backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90

NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).⁴⁵

Having also found that Respondent refused to recognize and bargain with the Union in violation of Section 8(a)(5), I shall recommend that it be required to bargain, upon request, with the Union, and to embody any understanding reached into a signed agreement.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁴⁶

The Respondent, Samuel Wade, an Individual d/b/a Major Cab Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening to close up the business before permitting a union to represent the employees, stating that it had already fired one union adherent and threatening to fire another if he continued to engage in union activities, stating that it would not have a union and would not discuss possible union benefits involving unionization, telling an employee that he was fired because he had been fraternizing with union adherents and engaging in union activity, interrogating employees concerning their union activities, threatening employees that it would remove the radios from their cabs because they had engaged in union activities, telling employees that they were being fired because they were "instigators of the Union," and forbidding employees to discuss union matters with other employees.

(b) Discouraging membership in Chauffeurs & Industrial Workers Local 5 of Seafarers' International Union of North America, AFL-CIO, or any other labor organization, by discharging or otherwise discriminating against any person in regard to hire or tenure of employment or any term or condition of employment.

(c) Refusing to recognize and bargain collectively concerning wages, hours, and other terms and conditions of employment with the above-named Union as the exclusive bargaining representative of the employees in the following appropriate unit:

All drivers of taxicabs employed by the Employer at its East St. Louis, Illinois, facility, excluding dispatchers, mechanics, office clerical and professional employees, guards and supervisors as defined in the Act.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which I find is necessary to effectuate the policies of the Act:

⁴⁵ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

⁴⁶ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Offer Ottis Blue, Archie Floyd, Albert Davis, and Harvey L. Blue immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any lost earnings in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Recognize and, upon request, bargain collectively in good faith with the above-named Union as the exclusive bargaining representative of the employees in the above-described appropriate unit, and embody in a signed agreement any understanding reached.

(d) Post at its location in East St. Louis, Illinois, copies of the attached notice marked "Appendix."⁴⁷ Copies of

said notice, on forms provided by the Regional Director for Region 14, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 14, in writing, within 20 days from the date of of this Order, what steps Respondent has taken to comply herewith.

⁴⁷ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by

Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."